

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARIO F RAMIREZ,

Plaintiff,

vs.

SCOTTS BLUFF COUNTY, CITY OF
SCOTTSBLUFF, PHILIP MOSHER, PHILIP
ECKERBERG,

Defendants.

7:12CV5008

MEMORANDUM AND ORDER

Defendant Scotts Bluff County removed this case to the Nebraska federal court from the District Court of Scotts Bluff County, Nebraska. (Filing No. [1](#)). The County thereafter filed a motion to dismiss, asserting the plaintiff's complaint fails to state a claim against the County, the County is entitled to sovereign immunity on plaintiff's state law negligence claim, and the plaintiff cannot recover punitive damages. (Filing No. [3](#)).

The plaintiff filed a notice to voluntarily dismiss his claims against the County. The notice was filed before any defendant answered or moved for summary judgment. The plaintiff's claims against Scotts Bluff County are therefore dismissed without prejudice by operation of law. [Fed.R.Civ.P 41\(a\)\(1\)\(A\)\(i\)](#).

After filing his notice of dismissal, the plaintiff moved to remand this action, asserting the remaining defendants, Phillip Mosher, Phillip Eckerberg, and the City of Scottsbluff, failed to timely seek removal and did not consent to removal by the County. (Filing No. [8](#)). Defendants Phillip Mosher, Phillip Eckerberg, and the City of Scottsbluff do not oppose remand. (Filing No. [11](#)). Accordingly,

IT IS ORDERED:

- 1) As stated in plaintiff's notice, (Filing No. [7](#)), the plaintiff's claims against Defendant Scotts Bluff County are dismissed without prejudice.
- 2) Defendant Scotts Bluff County's motion to dismiss, (Filing No. [3](#)), is denied as moot.
- 3) The plaintiff's motion for remand, (Filing No. [8](#)), is granted. This case is remanded to the District Court of Scotts Bluff County, Nebraska.

October 11, 2012.

BY THE COURT:

s/ Cheryl R. Zwart

United States Magistrate Judge